

## REMARKS

### Information Disclosure Statement

An Information Disclosure Statement was submitted on November 2, 2004. During an interview with the Examiner, the Examiner stated that the Information Disclosure Statement was not yet part of the record. A copy of the Information Disclosure Statement is attached hereto, along with copies of the references. It is believed that the pig ear chips are shaped by hand.

Applicant respectfully requests consideration of the Information Disclosure Statement.

### Interview

Applicant thanks the Examiner for the in-person interview conducted on April 28, 2005. Persons in attendance were the Examiner, Mr. Hague, the inventor, and Mr. Mantooth, attorney. The discussion was about the prior art and included a demonstration of folding a pig ear shaped product and also included the manufacturing process. No agreement was reached on the claims.

### The Rejections

All of the claims in the patent application have been rejected under 35 USC §103(a) as being unpatentable over a combination of references. The individual rejections will be discussed below.

Certain factual inquiries are required in an obviousness determination under 35 USC §103(a). These factual inquiries, discussed in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966) are summarized as follows:

1. determining the scope and content of the prior art;
2. determining the differences between the prior art and the claims that issue;
3. determining the level of ordinary skill in the art.

In order to make a *prima facie* showing of obviousness, the Examiner must show that there is some suggestion or motivation to combine or modify the references, that there is a reasonable expectation of success and that the references teach or suggest all of the claim limitations, MPEP 706.2(j).

Regarding the first *Graham* inquiry, the scope and content of the prior art, the Examiner cited a number of prior art references. The Applicant disagrees with the Examiner's characterization of some of the references.

Ganoe teaches taking a sheet of rawhide, folding it and then wrapping it or rolling it to form a dog bone. Ganoe does not teach or suggest a relatively flat product, much less a pig's ear shape.

Lynch teaches that pork skin is preferred over cow skin because it's digestible and nutritional. The pork skin is used in various canine treat products, namely knotted bones, twisted strips, chips, filled bones, sticks, patties and other ground products. Lynch has no suggestion of forming an animal ear, much less a pig's ear which is multi-layered.

Applicant's admission of prior art must be clarified. The real pig ears used as dog chews are shown by actual samples in Exhibit A, which was provided with the Declaration of Frank Jay Hague, mailed September 20, 2004. These real pig ears are relatively flat, and have a bottom edge, a top that is opposite the bottom edge and side edges that extend from the top to the bottom edge.

Sherrill teaches a chew toy for an animal formed into a desired shape by using rawhide bits with a bonding agent.

Frudakis teaches taking rawhide, cutting it, rolling it and shaping it.

Anderson teaches taking rawhide and rolling it with meat inside.

Alexrod teaches comminuted rawhide, melting it and then injection molding it.

Berends is relied upon by the Examiner for showing folding animal skin into a desired shape product. Berends is cumulative to Ganoë. Berends has no suggestion of forming an animal ear, much less a pig's ear.

Rodriguez shows a cow ear-shaped rawhide dog chew. Rodriguez has no teaching of how the chew is made or of how many layers of rawhide.

Regarding the second *Graham* inquiry, determining the differences between the prior art and the claims at issue, the claimed invention as a whole must be considered. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

The references differ from the claimed invention in a pig ear shape treat formed from folded pigskin of plural layers from non-ear areas of a pig,

which treat has a bottom edge, a top, side edges, wherein the bottom edge is bowed.

Regarding the third *Graham* inquiry, the level of ordinary skill in the art, no determination has been made. However, Applicant has provided evidence on the level of skill in the art. Mr. Hague, the inventor, has at least ordinary skill in the art by virtue of his experience in the animal skin products industry and the pet treat and chews business (see Declaration of Frank Jay Hague, paragraphs 3-5).

The Examiner has not made a *prima facie* showing of obviousness. The Examiner states “the particular shape one chooses to impart to the product is seen to be have been an obvious matter of choice and/or design, especially since, as disclosed by applicant’s admission of the prior art, it was known to give dogs real pig ears.” None of the references teach or suggest plural layers of pigskin formed into a generally flat object. Ganoë shows a rolled cylindrical type object (a dog bone). Lynch does not teach or suggest forming a multi-layered pigskin treat. A real pig ear treat does not provide any suggestion or motivation to provide a plural layer pigskin treat. At most, a real pig ear pet treat can only suggest the single layer pig ear chip. Berends does not suggest forming any particular shape, much less an animal ear, or a pig’s ear. Rodriguez provides no suggestion or motivation to make a multi-layered ear. Rodriguez is very complicated by the bulbous end that has a channel therethrough. Making a multi-layered ear, with the bulbous

end, would be very difficult and Rodriguez does not teach how to solve this technical problem. The single layer pig ear chip actually teaches away from Applicant's invention, which is multi-layered and more difficult to form.

The mere fact that the prior art may be modified in a manner suggested by the Examiner does not make the modification obvious, unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780 (Fed. Cir. 1992).

Thus, there is no *prima facie* showing of obviousness because there has been no showing of a suggestion to combine or modify the references to obtain the claimed invention. Nor has there been a showing of a reasonable expectation of success. Making a multi-layered flat object in the shape of an ear is different than making a dog bone (Ganoe) or twisted strips, chips and ground products (Lynch). Nor has there been a showing of references that teach or suggest all of the claim limitations.

Even assuming, arguendo, that a *prima facie* showing of obviousness has been made, Applicant has successfully rebutted with evidence.

The inventor, Mr. Hague, recognized that real pig ears had quality control problems and that the single layer pig chip was an inadequate substitute. The references do not recognize the problem and thus cannot provide a motivation to one with ordinary skill in the art. Furthermore, Mr. Hague has at least ordinary skill; he has reviewed the references and finds no suggestion or motivation (see Declaration of Frank Jay Hague, paragraphs 16-18).

Furthermore, there is no reasonable expectation of success in combining the references and obtaining the claimed invention. Mr. Hague states that he experienced difficulty in developing the product because pig skin does not hold its shape and the oil in the pigskin keeps it from sticking together (see Declaration of Frank Jay Hague, paragraphs 13, 17). Mr. Hague's statement successfully rebuts any reasonable expectation of success.

Furtherstill, Mr. Hague states that the references do not teach or suggest all of the claim limitations. He states that none of the references describe how to make an artificial ear (see Declaration of Frank Jay Hague, paragraphs 16-18).

Thus, the claims are not obvious over the references.

In view of the foregoing, it is submitted that all of the claims in the application are allowable and such allowance is respectfully requested.

If any additional fees are required, please charge our deposit account number 23-2770.

Respectfully submitted,



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Group Art Unit: 1761

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Transmittal Form PTO/SB/21  
Information Disclosure Statement  
with 2 cited references  
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Date mailed: November 2, 2004  
Frank Hague 6653.36001